



# A Vision of Justice

The Future of the New Hampshire Courts



## Report of the New Hampshire Supreme Court

*Committee on Justice System Needs and Priorities*

September 2004





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**Cover detail:** *The Committee on Justice System Needs and Priorities, led by Attorney Bruce Felmly, meeting in the courtroom at the Supreme Court in Concord. Photo taken by Laura Mitchell.*





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The Honorable Chief Justice and Associate Justices  
of the New Hampshire Supreme Court

Re: Supreme Court Committee on Justice System Needs and Priorities

Dear Chief Justice and Associate Justices:

I am pleased to present "*A Vision of Justice – The Future of the New Hampshire Courts*," the Report of the New Hampshire Supreme Court Committee on Justice System Needs and Priorities. This report outlines the vision and recommendations of your Committee for addressing the future needs and priorities of the New Hampshire justice system.

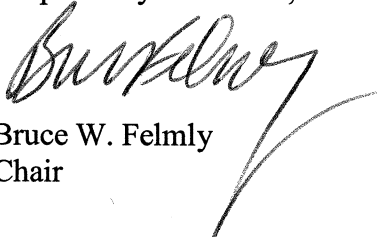
In forming this Committee and providing its charge, you asked us to consider the period of the next five years and to identify critical needs, assess developments in the delivery of justice to the public, and to provide a basis or platform for future implementation and action on innovations and initiatives.

We have followed your charge and worked on a fast track. We began our work in December 2003, and Committee members have devoted countless hours and great effort to this project. In a world where long range judicial planning commonly involves years of work, Committee members have met frequently and prioritized their schedules to complete this report in less than eight months.

Our report combines suggestions which we hope are both idealistic and realistic. We are mindful of the constraints of resources, but have conducted our discussions and presented our recommendations in the belief that our State will provide resources for the critical justice system needs of its citizens.

We look forward to your comments and consideration of our report and hope that this effort will work to enhance our justice system as it serves the public.

Respectfully submitted,



Bruce W. Felmly  
Chair

BWF/amp

# Members of the Committee

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# Acknowledgments

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The Committee extends its deep appreciation to the New Hampshire Bar Association for its assistance with distribution of a survey on issues confronting the court system and to all the individual members of the bar who kindly provided their thoughts and perspectives on the myriad issues contained in this report. We also owe our thanks to the judges, marital masters and court staff who took the time from their very busy days to answer our survey and share suggestions for improvements and innovative approaches to the administration of justice.

The Committee was grateful for the numerous contributions of United States District Court Clerk James Starr, a longstanding member of the New Hampshire bar, who has been at the forefront of technological innovation in the federal court. He took on the full workload of a subcommittee member. Additionally, he made available to our members the excellent work of his federal court staff, who remain actively involved there in deploying technology similar to that referenced in this report.

Additional thanks is offered to Jeff Smith, Gary Fowler, and Jim O'Neil of the Administrative Office of the Courts and to Rachel Hampe of McLane, Graf, Raulerson & Middleton, Professional Association who assisted the Committee in examining and assessing facilities, services, and personnel.

Finally, special recognition and thanks is owed to Peggy Haskett of the New Hampshire Supreme Court staff for her administrative assistance throughout the work of the Committee and to Anne-Marie Parker and Darlene Hargis from McLane, Graf, Raulerson & Middleton, Professional Association who assisted Bruce Felmly in assembling this report and in the coordination of Committee materials.

# Introduction

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The courts must be centered on serving the needs of the people. To succeed and to endure, the judicial system must be understood by and have the support and confidence of the citizens it serves. The touchstone of this report is the belief that a fair, efficient and accountable court system, which respects the dignity of all it serves, will be supported and will meet the needs of the people.

New Hampshire is uniquely positioned to achieve this goal. It has been blessed with a history of outstanding judges and court administration.

*The touchstone of this report is the belief that a fair, efficient and accountable court system, which respects the dignity of all it serves, will be supported and will meet the needs of the people.*

It is staffed by well-trained and committed professionals who serve New Hampshire by bringing justice to the public. The court system has met the challenges and needs of generations of citizens, and its leaders are

anticipating the demands of our future. It is a difficult and diverse job to provide for the wide array of legal needs coming to our courts. Former Chief Justice Frank Kenison reminded us years ago of the seriousness of the mission and the nature of the constituency:

*[T]he Supreme Court and the Judiciary of this State will continue to maintain and guard its house of justice for the humble as well as the powerful, for the poor as well as the rich, for the minority as well as the majority, and for the unpopular as well as the popular.<sup>1</sup>*

While the mission and acceptance of its obligations continue without dilution or fatigue, it is clear that we stand at a critical place. The nature and pace of change we will experience during the

next five years and the impact that change will have on the delivery of justice to the people will be unprecedented in our history. New Hampshire joins other states in experiencing a dramatic increase in the diversity of its population and the complexity of the family and personal legal issues they bring to the courts. There are striking changes in family composition, particularly in the growth of families headed by a single parent. The racial and ethnic composition of the state is changing, particularly in our urban areas. The aging of our population will continue and create new emphasis on legal issues about caring for that population. These trends also affect the court's workforce and its ability to attract and retain highly talented court staff and administrators.

While our notions of justice and fairness may not change, the mechanisms, speed of management, and the expectations of those receiving services through the court system are changing. All of us encounter daily changes in technology and information. Our means and manner of communicating have been revolutionized in the electronic "E-World." Business and commercial life are based on a digital reality. It is essential that those institutions handling our most critical communications and interactions – our courts – are up to speed with technology and the modern essential means of transferring information.

Similarly, those served by the social, political, and legal systems all demand high levels of prompt, quality service. We are immersed in a universe which has set increasingly high expectations for immediate, top quality service. This is a good thing – but it raises the bar for all our governmental agencies and our courts to provide excellent "customer service."<sup>2</sup> It will be essential that the court system expand its training of judicial officers and staff and provide faster, more responsive service of consistent, excellent quality.

<sup>1</sup> New Hampshire House Journal, February 18, 1975 at 256-257.

<sup>2</sup> While the court system does not sell its products to customers in the commercial sense, we have used the term "customer service" in this report. We believe the term is commonly understood as creating an appropriate expectation of excellence in communications and delivery of services to the public.

A critical challenge for the court system will be to manage the revolutionary developments and advances in science, medicine, and engineering. Not only will electronic information and its transmission dominate our systems and operations, but legal issues beyond our historic imagination will confront us. The application of DNA testing, cloning, alterations or creation of cellular materials, and a constant stream of inventions, new products, and systems will test the flexibility and viability of our body of law. The increased capacity of our data collecting and monitoring information systems will clash with prior notions of personal privacy, criminal procedure, and the proper role of government. These issues will escalate and be resolved in our courtrooms – requiring levels of understanding and management beyond those required to deal with prior innovations.

Our Committee is optimistic about the ability of our courts to meet these demands. Our membership was drawn from judges, administrators, officials, and practitioners who approached these issues with a wide range of perspectives. We engaged in a focused examination by those extensively familiar with the system and who will be responsible for confronting these challenges. In addition, we had the input of a large number of attorneys and court personnel through a survey process. Our observations and recommendations should be seen as a prioritized memorandum of probable challenges and critical initiatives.

The Committee recognized that excellence in our courts is not simply a matter of handling cases fast or efficiently. New Hampshire courts enjoy a long and strong tradition of practicability, collegiality, and courtesy. The enhancement of operations to meet future challenges should not result in a rigid, inflexible system concerned only with statistical measures of performance.

In discussions with the members of the Supreme Court, it was recognized that the implementation of these proposals should now be presented to and examined by a broader constituency of public leaders. At its best, our report will serve to identify issues with strong recommendations for action by members of the court and legal community and set the stage for examination by a broad cross-section of public officials and citizens. In examining the future needs and operations of our courts, we did not require our ideas or recommendations to come to the discussion table with funding in place. In that sense we suspended our concerns regarding the availability of resources to pay for the systems necessary to serve the public. While these ideas and proposals are presented without funding in place, they now deserve to be examined for implementation in the light of those budgetary realities. Excellence in our courts is essential to our citizens, and only with broad understanding and support by New Hampshire's leaders and citizens will New Hampshire have a court system as good as our vision of it.

We also recognize that many of the initiatives and recommendations we suggest are already employed by certain courts or court staff. In calling for enhanced service to users of the system we do not suggest system-wide failures of those services. We encourage the expansion of best practices on a consistent basis and the provision of additional resources and oversight to bring top quality practices and performance to all cases and litigants coming into our courts.

In performing our work, the Committee agreed to divide its members into four subcommittees, each targeted on a major area or category of court system performance. These subcommittees met regularly and often drew upon resources and ideas of persons outside the Committee membership. These contributors are

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*New Hampshire's people must understand, and support, its court system and that system must change and improve to develop and justify that support.*

noted in the acknowledgments, and the Committee is very grateful to all those who assisted in this effort. Each subcommittee reported at meetings of the full Committee to assure that the

views and thoughts of the subcommittee were shared and examined by the full Committee. The subcommittees and their area of examination and study, which were carried forward into the organization of our recommendations, are as follows:

- Quality Assurance Subcommittee (Judge Edwin W. Kelly, Chair) – Enhancing and Measuring Court Performance – Quality Assurance and Public Confidence
- Public Service and Responsiveness Subcommittee (Judge Susan B. Carbon, Chair) – Responding to the Needs of the Public – Making Justice Affordable, Efficient, and Respectful
- Court Facilities, Services, and Personnel Subcommittee (Jane D.W. Bradstreet, Chair) – Improving the Operations of Our Courts – Court Facilities, Services, and Personnel
- Technology Subcommittee (Fred L. Potter Esq., Chair) – Advancing Access to Court Information Through Technology – Innovations that Improve the Administration of Justice

The materials which follow set forth an Executive Summary of the recommendations of our Committee, as well as a detailed presentation of the various initiatives, studies, and changes which we propose for the court system of our future. That future is here and all of the proposals are time sensitive. While precise prioritization of these recommendations

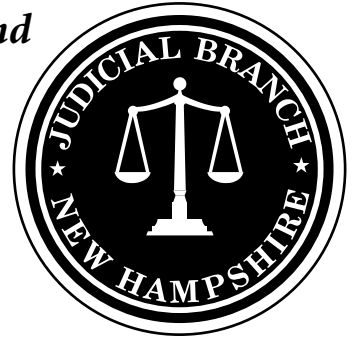
is difficult, within each area of our report the specific recommendations are set forth in the order of priority that the Committee determined.

Daniel Webster told us that “Justice is the ligament which holds civilized beings and civilized nations together.” Our courts are the place where that ligament is stretched, exercised, and strengthened. The foundation and traditions of New Hampshire’s court system are strong, but new pressures, risks, and demands now confront us, literally at light speed. To meet these demands, New Hampshire’s people must understand, and support, its court system and that system must change and improve to develop and justify that support. The Committee hopes this report will identify the areas to focus our efforts; its members welcome the opportunity to assist in meeting these challenges.

# Mission Statement

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*To preserve the rule of law and to protect the rights and liberties guaranteed by the United States and New Hampshire Constitutions, the courts will provide accessible, prompt, and efficient forums for the fair and independent administration of justice, with respect for the dignity of all we serve.*



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Although the core values and goals of New Hampshire's justice system are noted or described in a variety of constitutional passages, statutes, cases, or in the commentary of those who have served that system, there is no mission statement currently in place. The Committee believes a modern, concise statement of the mission of the court system is important. Ideally, this statement of values and goals will serve as a foundation for that system, and a beacon to all those looking to that system for direction. The Committee has drafted and recommends the above Mission Statement for the New Hampshire court system.

# Executive Summary

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## *A Vision Of Justice*

### *The Future Of The New Hampshire Courts*

The New Hampshire Supreme Court Committee on Justice System Needs and Priorities identified critical areas within the state court system that will impact the delivery of justice to the public during the next five years. Based on its findings, the committee members unanimously endorse the following recommendations and present them to the Chief Justice and the members of the Supreme Court for their consideration.

- Maintain independence and accountability of the justice system, while promoting continuity and working relationships with other components of state and local government.
- Build public confidence and trust in the courts by expanding communications about the justice system; enhance judicial evaluation procedures; provide appropriate responses to erroneous information relating to the justice system.

## **I**

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### ***Enhancing And Measuring Court Performance – Quality Assurance And Public Confidence***

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- Improve accessibility through procedural changes, training initiatives, and enhanced methods of communication.
- Adopt specific case processing time standards and monitor compliance to enhance control of scheduling and processing of individual cases so that final disposition is timely and fair.
- Reinforce core criteria of equality, fairness, and integrity in all court system decisions and actions. Specific emphasis should be given to advancing uniformity, consistency of protocols, and court oversight of the litigation process.

## **II**

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### ***Responding To The Needs Of The Public – Making Justice Affordable, Efficient, And Respectful***

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- Enhance availability of legal representation for citizens who do not have adequate resources to retain counsel; support efforts to secure adequate funding for indigent litigants. Alternative models for delivery of legal services should be explored including modifications of ethical rules to permit “unbundled” legal services, expansion of incentives and responsibilities of New Hampshire lawyers to provide pro bono services, and development of panels of specially trained lawyers to handle particular types of cases.
- Provide expanded alternative dispute resolution (ADR) opportunities and systems in all of New Hampshire’s courts

and hire a professional coordinator for such services.

- Continue to enhance efficiency and promptness of operations.
- Locate courthouses geographically to provide easily accessible public service; revise forms and system documents to make them more easily understood and uniform from court to court; improve interpretation services for non-English system users; enable users to interact with the system by computer.
- Continue and expand efforts to promote public education programs and interaction with the public so that input necessary to improve the system can be obtained and reviewed.
- Reflect throughout the courthouse environment, including court staff actions, a system-wide ethic based on respect, courtesy, and the dignity of all participants; improve systems to provide information and respond to questions of court visitors; provide a visual environment in courthouse facilities consistent with the cultural diversity of our state.
- Expand training, education, and monitoring of judicial officers and court system staff; expand use of “bench books” and protocols to encourage consistency; improve systems to recognize and reward the excellence of the court system staff; expand performance evaluations and assessment of court system procedures.
- Explore innovative and flexible proposals to deliver justice to the public in a rapidly changing world.

### **III**

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#### ***Improving The Operations Of Our Courts – Court Facilities, Services, And Personnel***

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- All courts within the New Hampshire judiciary should continue to move to staffing by full-time judicial officers.
- Update the job description of court personnel at each New Hampshire court.
- Expand the use of case managers to assist parties in dealing with court procedures.
- Review the results of the state’s problem-solving courts and consider their efficacy and potential for further expansion, with the objective to reduce recidivism, keep non-violent offenders out of prisons, and hold offenders accountable for their conduct and their treatment.
- Enhance the efficiency and quality of court reporting, especially through the use of digital recording and increased use of trained court monitors.
- Expand training and education of court staff to include training in customer service; encourage cross-training of the court staff in the varying responsibilities within the clerk’s office; study the use of “floating” court staff to meet unusual demands at court sites around the state.
- Enhance the availability, quality, and efficiency of language interpretation in all New Hampshire courts.

- Develop and utilize a realistic and reliable weighted caseload system as a management standard in budgeting and performance assessment.
- Prioritize convenience to the public and users of the facilities and reflect ongoing changes in demographics in citing or locating new court facilities; encourage and provide for interaction and cooperation among various New Hampshire courts.
- Establish a CMS working group to assist in implementation and development issues.
- Inform the Legislature about the financial impact associated with court technology and enlist legislative support for funding needs and staff and technological costs (where not offset by savings) in each budget cycle.
- Make available to the public “self-help” computer terminals at each court site as the CMS is implemented.

## ***IV*** \_\_\_\_\_

### ***Advancing Access To Court Information Through Technology – Innovations That Improve The Administration Of Justice***

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- Begin electronic notification (“e-noticing”) of hearings and court orders simultaneously with implementation of the CMS at each court site to assist the staff, bar and self-represented litigants.
- Use a centralized mailing system to relieve staff from the effort involved in paper-noticing to those parties, jurors, etc. for whom e-noticing is not available.
- Deploy updated case management system (“CMS”) for all New Hampshire courts allowing for a system-wide database and uninterrupted exchange of information among system users.
- Launch business process enhancement (BPE).
- Examine issues of public access and privacy and develop recommendations concerning those issues.
- Continue communication with a broad group of constituencies to maximize the success of technology development and utilization.



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## ***Enhancing And Measuring Court Performance — Quality Assurance And Public Confidence***

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The public wants its justice system to provide effective service at a reasonable cost. Court performance standards and measures are a way to assess what the public gets for its money. Using the trial court performance standards created by the National Center for State Courts and the Bureau of Justice Assistance as a model, the Committee recommends the establishment of five performance goals or major areas of emphasis toward which we believe the justice system should strive. They are as follows:

1. Access to Justice.
2. Expedition and Timeliness.
3. Equality, Fairness and Integrity.
4. Independence, Accountability, and Comity.
5. Public Trust and Confidence.

These five goals are alternative ways of viewing the more traditional articulation of the roles and responsibilities of the courts. Performance areas 2 and 3 emphasize dispute resolution, while the other three emphasize the court as an organization and its relationship to other branches of government and the public.

In pursuit of these performance goals the Committee has developed performance standards to guide the courts to the achievement of the goals. Each goal has a small number of prioritized standards which are not meant as rigid rules, but, rather, as guiding principles. We have also recommended initiatives to pursue or implement these goals and standards. These specific recommendations are also addressed in other sections of this report.

### ***Recommendations***

- 1. Specific improvements in accessibility should be made through implementation of procedural changes, training initiatives, and enhanced methods of communication.***

Courts should be open and accessible. Location, physical structure, procedures, and the responsiveness of personnel affect accessibility. Accordingly, the standards we ultimately choose will identify and require the elimination of barriers to the courts' services. Those barriers can be geographic, economic, and procedural. They can be caused by deficiencies in both language and knowledge of individuals participating in court proceedings. Additionally, psychological barriers can be created by mysterious, remote, unduly complicated and intimidating court procedures. The Committee has considered a wide range of suggested improvements or enhancement of services which will make the justice system more open, understandable and accessible to all users. The following are specific recommendations we endorse:

- Promote uniformity of rules among the courts while, at the same time, encouraging the consistent review of these rules to ensure that they reflect current standards of best court practices to achieve the goals of the justice system.
- Procedures and practices should be uniform throughout the justice system wherever possible.

- Procedures and practices of courts should be simplified and explained to all court users.
  - Every user of a New Hampshire court should be treated with courtesy, respect and dignity by all judicial and non-judicial staff.
  - The courts should be available to the public, as free as possible of geographic, physical, financial and cultural barriers.
  - Hours of operation, including telephone access, should be consistent among all courts.
  - Access and communications with the justice system should be enhanced through expanded use of:
    - Electronic and facsimile filing.
    - Electronic access to records.
    - Telephonic hearings.
  - The court processes should be made more understandable.
  - Review and simplify forms.
  - Make information available to the public on the internet in easily-understood language using pamphlets, etc.
  - Expand the use of case managers and other professionals at each courthouse to assist the public in court procedures and provide information on case handling.
  - Expand the use and availability of interpreters or interpretation services and bilingual staff where appropriate.
  - Enhance accessibility to the courts for the disabled including those who are hearing impaired, physically impaired, and mentally impaired.
  - Promote and encourage flexible use of courtroom space with different courts.
  - Promote consistency in practice among courts by the creation of bench books and procedural manuals, without sacrificing judicial discretion in individual cases.
  - Establish protocols regarding chamber conferences to avoid appearances of non-public proceedings.
  - Increase communication and interaction with juries by judges and staff, for example, judicial involvement with video jury instruction and arraignment instructions.
  - Consider use of name plates for all judges and staff.
  - Develop training and policies to ensure that all personnel accord respect, courtesy, and dignity to all those using the courts.
  - Review fees to determine reasonableness.
  - Review procedures and forms in uncontested matters to simplify, for example, adoption name change and plea-by-mail to minor offenses.
- 2. *The court system should adopt specific case processing time standards and measure and monitor compliance with those standards. The committee suggests utilization of nationally developed standards. We encourage the courts to enhance control of the structuring, scheduling, and processing of individual cases to achieve system-wide improvements in timely and fair disposition of cases.***
- Courts are entrusted with many duties and responsibilities that affect individuals and organizations involved with the judicial system, including litigants, jurors, attorneys, witnesses, criminal justice agencies, social service agencies, and members of the public. The repercussions from untimely

court actions in any of these involvements can have serious consequences for the persons directly concerned, the court, allied agencies, and the community at large. There is always a need to balance timeliness and expedition with the need to guarantee due process, ensure quality, and allow adequate time for reflection.

Courts should meet their responsibilities to everyone affected by their actions and activities in a timely and expeditious manner. Unnecessary delay causes injustice and hardship. It is a primary cause of diminished public trust and confidence in the court.

Defining delay requires distinguishing between the amount of time that is and the amount of time that is not acceptable for case processing. National and statewide authorities have articulated time standards for case disposition. Although many states have difficulty meeting these standards, they call for case processing time to be measured beginning with arrest or issuance of a summons in a criminal case or from the date of filing in a civil case.

In order to promote prompt and effective disposition of cases coming to our courts, the Committee recommends the following actions or programs:

- Case processing time standards will be established for all courts and made publicly available. These standards will be drawn from existing standards available from the National Center for State Courts and the Bureau of Justice Assistance.
- A system for measuring and monitoring compliance with case processing standards will be implemented and reports released to the public regularly. In developing these measurements, we encourage the use of weighted caseload guidelines.

- Courts should take increased responsibility for the structuring, scheduling, and control of cases from initiation through enforcement of any orders.

**3. The court system should reinforce core criteria of equality, fairness, and integrity in all court system decisions and actions. Specific emphasis should be given to advancing uniformity, consistency of protocols, and court oversight of the litigation process.**

New Hampshire courts will continue to provide due process and equal protection of the law to all who have business before them as guaranteed by the United States Constitution and the New Hampshire Constitution. Equality and fairness demand equal justice under law. These fundamental constitutional principles have particular significance for groups who may have suffered bias or prejudice based upon race, religion, ethnicity, gender, sexual orientation, color, age, handicap, or political affiliation.

Integrity should characterize the nature and substance of court procedures and decisions and the consequences of those decisions. The decisions and actions of all courts should adhere to the duties and obligations imposed on the court by relevant law as well as by administrative rules, policies, and ethical and professional standards. What the courts do and how they do it should be governed by a court's legal and

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*New Hampshire courts will continue to provide due process and equal protection of the law to all who have business before them as guaranteed by the United States Constitution and the New Hampshire Constitution.*

administrative obligations. Similarly, what occurs as a result of the court's decisions should be consistent with those decisions.

Integrity refers not only to the lawfulness of the court actions (e.g., compliance with constitutional rights to bail, legal representation, jury trial, and a record of legal proceedings), but also to the results or consequences of its orders. A court's performance is diminished when, for example, its mechanisms and procedures for enforcing its child support orders are ineffective or nonexistent. Performance also is diminished when summonses and orders for payment of fines or restitution are routinely ignored. The court's authority and its orders should guide the actions of those under its jurisdiction, both before and after a case is resolved.

The recommendations and procedures which the Committee believes will enhance the fairness of court action integrate extensively with other recommendations within this report. Specific emphasis is directed to the following initiatives or issues:

- Court procedures should be examined to reflect practices determined to be the most effective in providing timely, fair, and efficient resolution of disputes and should be as uniform as reasonably possible among all courts.
- Cases will be decided without undue disparity among like cases and upon legally relevant factors, free from bias or the appearance of bias.
- Decisions should unambiguously address the issues presented and clearly indicate how compliance can be achieved.
- The court will take appropriate responsibility for the enforcement of its orders.

- The use of bench books, procedural manuals, and protocols should be expanded to encourage consistency.
- Written orders should be provided for all litigants to promote clarity and compliance with decisions.
- Courts should reinforce the importance of responsibility for enforcement of court actions from discovery through enforcement of the final orders and identify which enforcement efforts are the responsibilities of the court.
- Courts should provide written procedures to ensure compliance with court orders, for example, collection of fines, child support.
- We recommend the courts articulate and publicize a written recusal policy.
- Courts should use order forms wherever appropriate to ensure clarity.
- We advocate the increased training of judges and staff on the importance of reflecting principles of equality, fairness, and integrity to the public and litigants in all of their contacts.
- Courts should train all system staff on what information is permissible to provide litigants.

**4. The Committee encourages enhancing and maintaining the independence and accountability of the justice system, while promoting continuity and working relationships with other components of state and local government.**

New Hampshire government continues to depend upon the long-standing principle that, “[s]eparation of the three co-equal branches of government is essential to protect against seizure of control by one branch that would threaten the ability of our citizens to remain a free and sovereign people.” Petition of the Governor and Executive Council, No. 2003-0827 (N.H. April 28, 2004).

The judiciary must, therefore, assert and maintain its independence as a separate branch of government. It must also monitor and control its operations and account publicly for its performance. Independence and accountability permit government by law, access to justice, and the timely resolution of disputes with equality, fairness, and integrity and engenders public trust and confidence.

Effective courts resist being absorbed or managed by the other branches of government. A court compromises its independence, for example, when it merely ratifies plea bargains, serves solely as a revenue-producing arm of government, or perfunctorily places its imprimatur on decisions made by others.

As the Supreme Court also noted in Petition of the Governor and Executive Council at Page 4, “. . . complete and total separation of powers is neither possible nor contemplated by the Constitution . . .” Thus, the courts must maintain independent status while maintaining communication and relationships with other branches or components of state or local government. If the court system is to maintain and

enhance institutional independence, it must clearly promote and institutionalize effective working relationships with all other components of state and local government.

The Committee recommends the following specific initiatives to enhance this goal:

- The courts will maintain their institutional integrity and independence and observe the principle of comity in their governmental relations.
- The courts will responsibly seek, use and account for the use of public resources.
- The courts will anticipate new conditions and emergent events and adjust their operations as necessary.
- The Committee encourages the court system to maintain and enhance the integrity of all three branches of government by identifying areas of cooperation and comity among:
  - The other branches of government.
  - Local communities.
  - Business and professional organizations.
- The court system should provide communications to encourage broader understanding and participation in the justice system budget process by members of the Legislature and others.
- The court system should maintain a budget process that is understandable and open.

*..the courts must maintain independent status while maintaining communication and relationships with other branches or components of state or local government.*

- The court system should continue and expand public outreach programs and encourage participation in public affairs commissions.
- It is essential that courts anticipate emerging trends and new laws and adjust operations as well as funding needs and sources for those operational adjustments.

**5. Enhance public confidence and trust in the courts by expanding communications which present information on programs, procedures, and justice system performance; enhance judicial evaluation processes and procedures; provide responses to erroneous information relating to the justice system.**

Compliance with law depends, to some degree, upon public respect for the court. Ideally, public trust and confidence in

*Multiple constituencies are served by the justice system, and all should have public trust and confidence in the courts.*

courts should stem from the direct experience of citizens with the courts.

The maxim, “justice should not only be done but should seem to be done,” is as true today as in the

past. Unfortunately, there is no guarantee that public perceptions reflect actual court performance. Multiple constituencies are served by the justice system, and all should have public trust and confidence in the courts. These constituencies vary by the type and extent of their contact with the courts. At the most general level is the local community – the vast majority of citizens and taxpayers who seldom experience the courts directly.

A second constituency served by the courts is a community’s opinion leaders, for example, local newspaper editors and reporters assigned to cover the court; local and state executives and legislators; representatives of government organizations with power or influence over the courts; researchers; and members of court-watch committees.

A third constituency includes citizens who appear before the court as attorneys, litigants, jurors or witnesses or who attend proceedings as representatives, family friends, or victims of someone before the court. This group has direct knowledge of the routine activities of a court.

The last constituency consists of judicial officers, other employees of the court system and lawyers, both within and outside the jurisdiction of the court who may have an “inside” perspective on how well the court is performing. The trust and confidence of all these constituencies are essential to the courts.

The Committee recognizes that court system performance in the broad range of services and initiatives discussed in this report bear heavily upon whether that public trust and confidence is achieved and perpetuated. Ideally, a court that meets or exceeds these performance standards is recognized by the public as doing so. In fulfilling its fundamental goal of resolving disputes justly, expeditiously, and economically, the court system will not always be on the side of public opinion. Nevertheless, where performance is good and communications are effective, public trust and confidence are likely to be bolstered. When public perception is distorted and understanding unclear, good performance may need to be buttressed with educational programs and more effective public information. In addition, because in some instances a court may be viewed as better than it actually is, it is

important for courts to rely upon objective data and public perceptions in assessing court performance.

The Committee recommends the following specific programs and initiatives to bolster public confidence and trust:

- Enhance communications and programs which provide public outreach and release of regular media information by the Court Public Information Office.
- Communicate court performance statistics and quality assurance information through dissemination to appropriate audiences.
- Mechanisms for investigating and adjudicating judicial conduct issues must be appropriately funded, function in a timely manner, and be as open as allowed by law.
- Prioritize the judicial evaluation procedure so that it is continuously reviewed and further developed, ensuring public input.
- Develop communication mechanisms for appropriate responses to erroneous public information about the justice system.

## II

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### ***Responding To The Needs Of The Public — Making Justice Affordable, Efficient And Respectful***

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Despite the best efforts and significant progress in recent years, courts are still subject to certain negative perceptions, namely, that they are often slow, incomprehensible, and costly. Many legitimately feel that the length of time it takes to process a civil, criminal or family case is unreasonable, even if the case is relatively simple. Many choose not to litigate at all because of the cost inherent in the lengthy process. Others are frustrated

with a system that seems foreign to them, where terminology used is unfamiliar, forms are confusing and procedures either make no sense at all or are inconsistent from court to court. Often those who wish to have an attorney are unable to afford counsel, and those who can afford counsel are nonetheless

frustrated with the cost occasioned by delays, continuances, ineffective scheduling practices and the like.

Additionally, courts are criticized for being purely reactive, responding rather than leading. While the business community or other branches of government may take a more aggressive approach to solving problems, courts are perceived as relatively static institutions, disinclined

toward change, since we are built around the concept of “*stare decisis*”, or following precedent or tradition. Reaching out into the community to learn what is needed and helpful is often as alien to judges as the court process is to the community that uses it. If perception is nine-tenths of reality, then we must commit to serious improvements in the structure and operations of the court system.

Courts are designed, constitutionally and statutorily, to resolve conflict — whether it be human conflict or business litigation. We must be capable of resolving all disputes ranging from divorce to DNA, child abuse to boundary line disputes, motor vehicle violations to homicide, substance abuse to medical malpractice, and everything in between. Rather than discouraging litigation because our dockets are crowded, we should embrace our responsibilities by providing structures, systems and processes that respond to the public’s ever-changing needs.

The Committee believes that it is no longer acceptable for courts to be complacent and reactive. Judges must take a leadership role to promote justice by helping to design the very structures, systems and processes that will enable courts to respond to the needs of the public. While we can only respond to those cases which come before the courts, we must ensure that we are able to respond to whatever issues come before us. Once through the courthouse doors, however, cases should be managed in a professional if not aggressive way. The “one

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size fits all” approach of years past is no longer viable. There must be both clerical and judicial oversight to see that effective and appropriate resolution is achieved. The adversarial model is neither necessarily sought nor desired in every case. Rather than setting each case onto a trial calendar, all possible options should be made available, through court referral, to see if the conflict can be resolved short of litigation. Options should be made available early on to assist parties in resolving issues.

All users of the court system, whether they be litigants young or old, attorneys, law enforcement, service providers or any of the myriad other consumers, have a right to expect courts to be accessible, understandable and accountable, affordable, respectful, efficient, flexible and innovative, and that they provide high quality services on a consistent basis.

Toward this end, the Committee has provided below a variety of recommendations which we hope will significantly improve our delivery of justice.

## Recommendations

- 1. The court system should enhance the availability of legal representation for citizens who do not have adequate resources to retain counsel and support efforts to secure adequate funding for indigent litigants. Alternative models for delivery of legal services should be explored, including modifications of ethical rules to permit “unbundled” legal services, expanding the incentives and responsibilities of New Hampshire lawyers to provide pro bono services, and development of panels of specially trained lawyers to handle particular types of cases.***

Enhancement and expansion of legal representation for litigants without resources to hire counsel is a critical

priority for the court system. This priority begins with the need for parties to achieve fair and appropriate outcomes by having essential legal assistance in resolving their disputes. Beyond that, the efficiency and management of the court system is enhanced when participants understand and comply with the rules and procedures.

The Committee fully supports the recommendations of *Challenge to Justice – Report on Self-Represented Litigants in New Hampshire Courts* (January 2004). The Committee supports expanding efforts to secure legal counsel for unrepresented litigants, particularly those faced with compelling personal and financial issues such as child custody, abuse and neglect, and domestic violence, or when shelter or subsistence income is at stake. Times of greatest vulnerability compel access to the best of resources. Additional funding for such legal services is an important priority and the Committee encourages development of partnerships with industry and other interest groups to expand such resources.

The Committee recommends consideration of alternative models of delivery of legal services, including panels of specially trained lawyers to handle particular types of cases (analogous to the public defender system in criminal cases for family cases including child protection, child custody and domestic violence). The Committee also supports strengthening New Hampshire Rule of Professional Conduct 6.1 relative to pro bono attorneys for low income litigants, proposed Rule 6.5 relative to relaxing conflict rules to facilitate “unbundled” legal services, and making

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every effort to accommodate the scheduling needs of pro bono attorneys to encourage broader participation.

2. ***The court system should provide expanded alternative dispute resolution (ADR) opportunities and systems at all courts. These services should be offered where a purely adversarial system may not be desirable for any number of reasons. The Committee supports statewide court system coordination of ADR systems and the hiring of a professional coordinator for such services.***

*We encourage a multi-door courthouse where all matters come to one forum, but litigants may be guided to a variety of programs which will effectively and efficiently meet their needs.*

The adversarial model of litigation should not be our only model for resolving disputes. The judicial system should develop procedures where all cases are welcomed, but multiple options including alternative dispute resolution

(ADR) procedures are offered. We encourage a multi-door courthouse where all matters come to one forum, but litigants may be guided to a variety of programs which will effectively and efficiently meet their needs.

Many dispute resolution programs have been tried throughout the state, with varying degrees of success often dependent upon local resources, personnel and time to create and implement programs. The Committee recommends that mediation be expanded for nearly all types of cases (certain exceptions such as domestic violence should be excluded unless specifically requested by both parties). While currently rarely employed in certain contexts, such as criminal litigation, child

abuse cases or termination of parental rights cases, we encourage broad efforts to test this model even in these types of cases. Often in criminal cases, for example, prosecutors or law enforcement officers may be willing to meet with defendants, particularly first offenders, and offer alternatives to trial such as successful completion of driver safety courses in exchange for “nolle prosequing” the case. Such forms of plea negotiation, in effect, can satisfy the State’s goal of assuring safe drivers and the defendant’s goal of having a clean record and lower insurance rates. Similarly, in child abuse or termination of parental rights cases, family group conferencing has been successfully implemented in a number of jurisdictions around the country to achieve safe placement and permanency without protracted and painful litigation. When all parties can focus upon the best interests of children, rather than focusing upon blame and deficiencies, children can be placed in safe homes and parents can retain dignity and contact.

The Committee supports significant expansion of ADR throughout the state and for all types of cases in all of our courts. To achieve this major goal, the Committee also supports the hiring of a statewide coordinator to lead these efforts.

3. ***The court system should continue to enhance the efficiency and promptness of its operations, and the Committee recommends that a variety of specific procedures be implemented or expanded to accomplish this goal.***

Many steps can be taken to improve efficiency in the scheduling and processing of cases to respond to the criticism that courts are slow, delays replete, and the system generally unaccountable for results. In light of the critical rights and obligations adjudicated by this system every day,

innovative and proactive steps should be initiated or expanded throughout the court system. We encourage the following specific steps:

- *Effective case management* must be instituted, including scheduling practices that permit handling emergencies on a daily basis, while allowing for multi-day, consecutive-day hearings as necessary. We support the priority given this system in the technology section of this report.
- *Time-specific scheduling* is recommended for most cases (or block scheduling for matters such as arraignments or payment hearings). This prioritizes the value of time of litigants and attorneys alike.
- *Continuances* should be strongly discouraged absent extremely good cause; lack of preparation does not constitute good cause. Continuances are often the result of inefficient case management (e.g., continuance granted by agreement, but not with a set “new” date, case then scheduled at a time other party is unavailable) and should become less of an issue as reliable case management systems are implemented.
- In cases where further hearings are needed, those hearings should be *scheduled from the bench*. All parties should be required to bring calendars and commit to a date and time certain for upcoming proceedings to avoid the need for continuances.
- Courts should honor the “*first-scheduled*” rule, and if conflicts arise between proceedings in different courts, permit the first scheduled matter to be heard except for good cause.
- *Centralized docketing* should be considered. This would enable all courts to enter cases into one central station to

prevent attorneys from being scheduled in multiple locations simultaneously.

- As a general rule, cases should be *individually assigned* to a particular judge to promote accountability for each case. It is more efficient for one judge to become familiar with a case, the orders and expectations, and adhere to them, rather than having any judge randomly hear any matter pertaining to a case. Such a practice also promotes greater accountability within the bar and by the public, as there will be no opportunity to argue confusion or misunderstanding. These procedures may require exceptions or flexibility in unforeseen circumstances, but individual assignment should be the rule. The Family Division has utilized individual assignment since its inception, and the Superior Court is commended for expanding its system of individual assignment.
- *Time standards* should be adopted and enforced for all types of cases, and in all courts. (See p.10)
- *Teleconferencing and/or video conferencing* should be utilized where feasible and practicable, particularly where parties or counsel may otherwise be required to travel long distances or take time off from work for matters of scheduling, where personal appearance is not necessary to promote the goals of justice. Expansion of these communication systems and procedures should be encouraged throughout the court system.
- An *800 number* to call in for questions about hearings or processes anywhere in the state should be explored to provide court information regarding all aspects of a case (e.g., bail status, pending orders, scheduled hearings, etc.).

- Although *night court* has been studied and is used in some locations, it should be cautiously explored to see if evening hours can promote accessibility for those who might otherwise have a difficult time utilizing the court system.

**4. Accessibility of the court system should be expanded and enhanced by geographically locating courthouses to best serve the public; revising forms and system documents to make them more easily understood and uniform from court to court; improving interpretation services for non-English speaking system users; and enabling users to interact with the system by computer.**

The Committee recommends a wide range of steps and procedures to improve and expand the accessibility of our court system. Many of these recommendations are also set forth in the Enhancing and Measuring Court Performance section of this report (See p. 9) This initiative particularly focuses upon the methods of communication and ability of users to interact and understand the rules and procedures of the court system. The Committee believes that care should be taken to ensure that the terminology used in court forms and orders is clear and understandable, uniform and consistent from court to court, and that language assistance is available for those for whom English is not easily understood. Specifically we offer the following suggestions.

- Courthouses should be located, whenever possible, *convenient* to the public. Access to community resources is an important consideration in promoting local connections. In determining the location of courthouses, consideration should be given to the combination of public and governmental facilities to enhance public convenience.

- *Forms should be written in plain English.* Simple declarative sentences or questions should be used. Latin or other uncommon terms or language should be discouraged. If a legal term must be used, a simple parenthetical explanation should be included.

- *Forms should be uniform throughout the state,* and between different courts. There is no reason, for example, why a litigant should have to complete three different financial affidavits for one type of case, or why affidavits or other forms such as appearance forms should vary from court to court. Such unnecessary inconsistency creates confusion and frustration for the public, including the bar.

- *Forms should be translated into different languages* depending upon the diversity of consumers in particular regions of the state.

- *Certified interpreters* should be accessible as needed. It is critical that accurate interpretation services be provided, including the use of certified interpreters. See the *Improving the Operations of Our Courts* section (p.29) for further discussion of interpretation services, including the use of developing interpretation technology.

- Court *pamphlets* such as informational brochures should also be *translated* into a variety of languages as may be useful for the particular court.

- *Computer terminals* should be available in courthouses to allow parties to research issues related to their cases, download forms to complete, and, as electronic filing comes to pass, to file documents.

**5. *The court system should continue and expand its efforts to educate the public and interact with citizens so that support for the system can be enhanced and input necessary to improve the system can be reviewed.***

In order to educate the public about the court system, the court's Public Information Office should make guides, pamphlets, handbooks, brochures and other information readily available in courthouses. The same items should be published electronically on the Judicial Branch website. All of those materials should include the "Mission Statement" recommended by the Committee in this Report. We also encourage the following services and programs:

- *Speaker's Bureau.* Judges and clerks should be readily available, through a Judicial Branch "Speaker's Bureau," to address community groups and schools. Programs such as the Bar's Lawyer (and Judge) in Every School should be supported. Similarly, the Supreme Court's enormously successful "On the Road" program of oral arguments in communities across the state should be supported.
- *Judicial Branch Website.* Staff resources should be committed to ongoing enhancement of the Judicial Branch website content to include, among other educational tools, curriculum guides on the court system, audio recordings of Supreme Court oral arguments (now available), news articles about developments in the law, and other topics of importance to the legal community.
- *Statewide Citizens' Conference.* The Court should consider scheduling a Statewide Citizens Conference to engage the public in learning about the court system, hearing its recommendations for

improvement and soliciting the input of the public to help make the court system as strong as possible.

**6. *The courthouse environment and contacts with court staff should reflect a system-wide ethic based upon respect, courtesy, and the dignity of all participants. Systems to provide information and respond to questions of court visitors should be improved. Courthouse facilities should provide an environment reflecting the cultural diversity of our people.***

Courthouses can be perceived as intimidating and daunting. The public comes to court under stress and duress, only to present very personal and difficult issues to strangers in an environment that is often entirely foreign to them. Thus, any steps that court personnel can take to ease this stress will undoubtedly be appreciated. Some specific suggestions are offered.

- *All members of the public, whether litigants, members of the bar, or others, should be treated with courtesy, respect, and dignity.* Every contact with court personnel, from the initial contact with a security officer to a clerk at the counter, to the judge in the courtroom, has an impact on the public's perception of the court system, and of their case in particular. First impressions count, and every impression counts. It takes many positive experiences to offset one bad

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experience. Court staff and judicial training should be centered on these realities. We understand that throughout our court system, many judges and staff meet this standard every day; our goal is to make it a universal experience for all members of the public.

- *A staff member (whether bailiff, volunteer or otherwise) should be available to assist each member of the public, directing them to the appropriate department, courtroom or staff member for guidance. Personal contact and communication with a welcoming greeting sets the stage for a less stressful, more productive encounter.*
- *A designated staff member should be available to answer questions without frequent interruptions.*
- *The interior of courthouses should be reflective of cultural diversity. Artwork, paintings, portraits and the like should reflect a variety of backgrounds. To make the environment more pleasing (and thus help to reduce stress and anxiety of litigants), consideration should be given to having local artwork displayed. This is already done in some of our courthouses. Organizations such as the NH Council for the Arts or the Currier Museum of Art should be contacted to see if artwork, particularly of local artists, may be obtained for display. In courts where children are frequently present, children's artwork from local schools may be appropriate and appreciated by both the public and the school children who have the opportunity to display their work.*

**7. *The court system should encourage and enhance systems that will assure excellence in system performance. The Committee recommends expanded training, education, and monitoring of judicial officers and court system staff. Use of "bench books" and protocols should be expanded to encourage consistency. Systems to recognize and reward the excellence of court system staff are an important need. Performance evaluations and evaluative input on court system procedures and performance should be expanded.***

Courts should set the highest standards for performance and seek to achieve excellence on a daily basis and with every case that is handled. From the public's standpoint, the only case that matters is their own. We can ill-afford to mishandle one case on the theory that we handle "most" very well; *all* cases are important.

Several recommendations are offered to help achieve judicial excellence:

- *New judge training* should be available for every judge, regardless of whether the judge is part-time or full-time. This training should include both substantive and procedural law, and other issues such as demeanor, conflicts, stress management, and so forth.
- *A mentoring program* for new judges should be available.
- Judges should receive *customer service training* to ensure that they are consistently mindful of how they present to the public in court.
- *Bench books and other protocols* should be offered and encouraged to help achieve uniformity in process and help achieve consistency as to procedure, while enabling judges to make individual decisions based upon the law and

facts in evidence. Judges need to retain discretion and the ability to respond to individual case circumstances, but available protocols will provide a resource and reference point which should not limit that proper exercise of discretion.

- *Bench/bar meetings* should be expanded to discuss issues of common interest. Communication and interaction with the bar should be a priority of the court system.

Specific strategies are also offered to help staff achieve excellence:

- *Regular training* should be made available for all staff. It should be accessible to staff, such as within each courthouse or through regional trainings to minimize travel time and to enable staff to use their own systems while being trained.
- *Satellite trainings*, where training is conducted from a central location but staff may view on television and participate through a live feed, should be explored.
- *Staff manuals* should be available for all types of cases to assist staff in achieving uniformity and consistency in procedure, and help minimize errors which may be made in handling cases due to lack of familiarity with a particular issue.
- *Customer service training* should be required of all staff, regardless of their position.
- Expanded efforts should be made to *retain staff*, with consideration to flexibility in hours, job responsibilities and pay scales that reflect the demands of court work.

In this regard, it is particularly important to recognize that the work of the courts is dependent upon the staff who work diligently day in and day out. We need to devise ways to recognize, value and care for them, while also being mindful that we are of limited financial resources and should explore non-remunerative, yet still valuable, ways to reward staff.

Other recommendations to help courts achieve high quality performance include the following:

- *Performance Evaluations*. Each courthouse should have questionnaires to receive public comment on how their cases are handled. Such constructive criticism should be reviewed and incorporated to examine where improvement can be made. The evaluations should cover all matters and personnel with whom they deal throughout the courthouse, including security officers, clerks and judges.
- The possibility of instituting a *Court Watchers program* should be explored. Having responsible citizens observe court on a regular basis may be an important and effective way to obtain constructive input by persons who have no vested interest in the cases being heard.
- *Electronic Newsletter*. The court system should launch a newsletter designed to build a spirit of communication and connection among staff at all court locations. The newsletter should be printed for distribution to court personnel and published electronically on the Judicial Branch website, for

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*Courts should set the highest standards for performance and seek to achieve excellence on a daily basis and with every case that is handled.*

public viewing. The newsletter will keep the staff informed about developments in the court system, technology improvements and progress, policy changes, and personnel changes and will include a regular message from the court leaders about system-wide issues.

***8. The court system must continue to explore innovative and flexible proposals to deliver justice to the public in a rapidly changing world.***

The Committee recognizes that providing enhanced and more efficient services in the face of rapidly changing challenges and demands upon our court system may require broader structural change. Issues of changing court jurisdiction, composition, or unifying various courts present enormously complicated concerns. While the Committee discussed the nature and implications of some of these issues, it was our view that these issues and their resolution exceeded the charge given to the Committee by the Supreme Court. In addition, in some cases, such as the decision to expand the Family Division, other committees or staff groups are specifically charged to examine those issues. Nonetheless, as we move forward with improving our response to the public's needs, we hope that court structure, improved interaction, and teamwork will continue to be studied to provide the most relevant and innovative court system possible.



## *Improving The Operations Of Our Courts — Court Facilities, Services, And Personnel*

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The New Hampshire judicial system currently is comprised of the Supreme, Superior, District, and Probate Courts and the Family Division operating in approximately 46 courthouse facilities. It is administratively served by the Administrative Office of the Courts located in Concord. The system is served by approximately 56 full-time judges, 57 part-time judges, and a court administrative staff with approximately 587 positions. The needs and activities of the various courts in these separate locations vary significantly, based upon the volume and nature of their caseload. Some of our courts in urban centers have significant numbers of cases, while in more rural areas the volumes may be low, but at any given time a complicated case may arise which may dominate the docket. The entire court system is dealing with and adapting to increasing numbers of unrepresented parties. The impact of self represented parties on the court system has been extensively studied by the January 2004 report on self-represented litigants, which examines the burdens and demands that this reality places upon judges and court staff.

In this section of the report, we describe concerns and issues relating to court facilities, services, and personnel and provide a series of recommendations for future operation. The recommendations range in complexity from major changes in policy or direction to minor refinement of existing delivery systems. We have prioritized the recommendations as

members of the Committee perceive them, but these divisions are inexact and all of the initiatives set forth here are thought to be important.

### ***Recommendations***

- 1. All courts within the New Hampshire judiciary should continue to move to staffing by full-time judicial officers.***

New Hampshire has been blessed with a history of excellent judges, many of whom sit or have sat on a part-time basis. This is a reflection of the limited dockets in certain areas, the desire to provide local courts serving rural communities, the desire to offer flexible hours of operation in certain of our courts, and the reality of limited financial resources for judicial positions. These part-time judges have brought energy and commitment to serving the system and their communities, as well as the practical dimension of perspectives that are enhanced or broadened by their other professional endeavors.

On the other hand, the demands and intensity of judicial training and education, the concern and perception that judges be seen as free from bias or favoritism, and the need to deliver consistent high quality judicial services all press for staffing

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*..we encourage the reconfiguring or replacement of part-time judicial positions with full-time judges as vacancies occur.*

the courts with people whose only job is judging. The Committee believes that New Hampshire has been moving to a full-time judiciary for some period of time and that our recommendation is not a change in course. It may, however, be a change of emphasis, and we encourage the reconfiguring or replacement of part-time judicial positions with full-time judges as vacancies occur. In many cases, we recognize the replacement of a full-time judge for a part-time judge who previously served may require examination of the scope and jurisdiction of the individual

*The need to assist unrepresented parties with objective, helpful instruction, but without favoring that party with unfair advantage, is a critical and expanding need in our system.*

court, perhaps with coordination of judicial resources on a regional basis. We also recognize it may be difficult to strike the appropriate balance between judges with roots in the community and proximity to the constituency of

that court, with cost effective staffing and utilization of judicial resources throughout the system, but we nonetheless recommend continued progression to a full-time judiciary as vacancies are created by attrition or otherwise.

***2. The job description of court personnel at each New Hampshire court should be updated.***

The judicial branch completed a classification and compensation study and report of court jobs in September of 2000. Due to the budgetary consequences of the recommendations of that report, no action was taken. The job descriptions currently in use by the judicial branch were written in 1983. The changes in technology alone make today's workplace very different from

that of 1983. Processes and procedures have changed due to legislative changes. As a result, the scope of many jobs has changed significantly. These changes need to be reflected in the job descriptions and the grade level classification of the court personnel.

The Committee recommends the Classification and Compensation Study be reviewed and a plan for implementation of those recommendations that are still applicable be undertaken. As we look at other personnel issues, such as flexible workers and case managers, it is imperative that we know what the workforce is doing now, how they are organized, what is working well, and what needs to be improved.

Currently, the judicial branch is implementing a new case management system. Along with that implementation, a business process enhancement project is being completed. (Extensive discussion of these initiatives is included in the technology section.) Information gained during these projects will have consequences for the way business is conducted in the courts. All this must be considered and acted upon to make the judicial workplace efficient.

***3. Expand the use of case managers to assist parties in dealing with court procedures.***

The proliferation of self-represented litigants has placed a significant strain upon court staff. Litigants unrepresented by counsel require special attention simply to achieve baseline levels of court efficiency. Lack of experience or familiarity with court procedures creates significant tension with represented parties who often feel that the self-represented litigant is receiving unfair advice and flexibility in

compliance with rules. The need to assist unrepresented parties with objective, helpful instruction, but without favoring that party with unfair advantage, is a critical and expanding need in our system. The January 2004 self-represented litigant report has recommended increased use of case managers to provide in part for this growing need. Of course, in most courts existing personnel in the clerk's office currently provide advice or instruction, but it is not consistent or handled the same way in each court. We envision an improvement in service by identifying the responsibility as an expected, visible core duty of a member of the staff, not a service which may be inconsistently provided by an already overburdened clerk's office. The number and location of case managers will vary with the volume and complexity of cases within our system, but we recommend a significant increase in deploying such professionals throughout the system.

***4. The court system should review the results of the state's problem-solving courts and consider their efficacy and potential for further expansion, with the objective to reduce recidivism, keep non-violent offenders out of jails and prisons, and hold offenders accountable for their conduct and their own treatment.***

In problem-solving courts, the roles of judges and others involved in justice are designed to maximize the likelihood that an offender will not repeat his or her criminal behavior. Under this model, judges, treatment providers, prosecutors, defense attorneys, and various executive branch agencies focus their combined energies on holding the defendant accountable for his or her behavior and, especially, for his or her treatment. This approach brings together the expertise of the treatment

provider, the knowledge of the prosecutor and the defense attorney, and the authority of the judge.

The judge in a problem-solving court typically reserves the right to impose a sanction if the defendant fails to comply with a treatment plan that has been developed specifically to address that defendant's circumstances. The defendant knows the treatment plan and the sanction for failure to adhere to the plan is clear. In the event he or she fails to comply with the treatment plan, the problem-solving court model provides for prompt notice to the judge who, in turn, swiftly imposes the sanction.

Experience around the country shows that problem-solving courts, especially drug courts, provide non-violent offenders with incentives to correct their behavior. The benefits to the defendant include the chance to stay out of jail and to keep his or her record free of convictions. The opportunities for the community include a reduction in incarceration costs and the prospect of a decline in the rate of criminal recidivism. The committee recommends that the judicial branch continue its cooperation with criminal justice system partners to find effective ways to reduce crime which include feasible methods of treating sentenced defendants.

**5. *Efforts should be made to enhance the efficiency and quality of court reporting, especially through the use of digital recording and increased use of trained court monitors.***

As our Committee began examination of court reporting and transcription services, the Supreme Court announced an ongoing plan to expand the use of digital recording, with elimination of stenographic positions within the system. How to best provide for high quality court reporting with the existing resource base is a challenging issue. The Committee did not attempt to revise or undo the course the Supreme Court has set, but is committed to requiring an accurate record with prompt reporting and transcription as essential to a well-functioning court system.

The Committee recommends rapid deployment of digital recording services and the continued development of court monitor services sufficient to assure a high quality record. The practice in some courts of using other court staff with limited training to operate recording equipment, presumably because of the unavailability

of trained court monitors, should be changed.

The Committee recommends the development of standard monitoring procedures for all courts to follow. The court monitor needs to be trained, not only in operations of recording equipment, but

also the management of exhibits and the practicalities of creating and assembling an accurate record. The court monitor also should be trained in dealing with unexpected contingencies and events.

The court monitor position should have a description and grade level consistent with these important responsibilities and clear standards of performance should be promulgated. At a time when court stenographers operating in the private sector can deliver immediate available copy by using evolving technology, the use of recording technology in the court system must be adapted to provide quick and accurate transcription. It will be important to continue to study digital recording to determine if it can meet that need on a sustained system-wide basis. Court reporting and transcription is an area where there is significant ongoing technological advances and it will be important that our court system stay abreast of those innovations, including movement towards real time reporting in appropriate cases. Study should also be given to providing parties a non-transcribed electronic recording of proceedings, at their cost, where the litigant does not require a transcription of the proceeding.

**6. *Training and education of court staff should be enhanced and expanded to include training in customer service, as well as new technology and other administrative tasks. Cross-training of the court staff in the varying responsibilities within the clerk's office should be encouraged. The use of "floating" court staff to meet unusual demands should receive further study.***

The Committee recommends a dramatic enhancement of court administrative staff training and education. This will be essential as technological innovation and computer systems expand. Beyond managing new equipment or systems, professionals within the court system will require enhanced training in customer service and efficiency in meeting the

*Beyond managing new equipment or systems, professionals within the court system will require enhanced training in customer service and efficiency in meeting the needs of the public and system users.*

needs of the public and system users. In order to enhance delivery of services, the Committee recommends cross-training the personnel in various jobs within the clerk's office, enabling administrators to flexibly assign professionals to differing tasks depending upon case volumes or specific needs. We recommend that this training and education employ the use of online or video delivery within the employee's courthouse, avoiding unnecessary travel to the AOC or other centers when possible. Essential to a well run and efficient system is a professional staff which is provided training, resources, and an environment to maximize its potential.

**7. *Enhance the availability, quality, and efficiency of language interpretation in our courts.***

The dramatic changes in New Hampshire's ethnic composition place acute demands upon the court system in providing available and accurate interpreter services. While certain languages such as Spanish and French frequently require interpretation and each courthouse should be able to routinely provide for such interpretation that is only a part of the demand. The judge or court clerk of today is confronted with a huge array of languages and dialects in managing legal proceedings. Standards and assurance of quality for interpretation are improving, but remain a great challenge. Fortunately, technology is bringing some relief, as various dial-up interpretation services are becoming available. One Superior Court judge recently had a requirement for an interpreter in "Dinka," a dialect of the Sudan. Within a short time interpretation was provided through the use of a commercial off-site interpretation firm. The Committee encourages the use of such technology and systems to assure

that high quality and reliable interpretation can be provided on reasonable notice for proceedings within all our courts.

**8. *All courts should develop and utilize a realistic and reliable weighted caseload system as a management standard for use in budgeting and performance assessment.***

As noted in the Enhancing and Measuring Performance Recommendations, our court system will benefit from upgraded performance standards and our system should continue to move in the direction of their adoption and use. Essential to evaluating or estimating performance is the ability to reliably receive data which enable realistic comparison between and among court locations. Courts currently do not define or measure the "cases" which come before them in a uniform or consistent manner. For example, a civil action may vary tremendously from one case to the next – one may be a brief bench trial with limited issues and judicial demands, while another may be a five-week medical negligence case with extensive motions and complexity brought before a jury. Should each of these "cases" be measured as one unit in assessing system performance and demand? This question is complicated because some courts define the "case" as including requests for information after the underlying matter has been adjudicated or defining multiple counts in a multiple-indictment criminal matter as separate "cases" even though they arise out of one criminal event. While there is complexity in determining the best manner to provide for such measurement, we encourage further study and the determination of a consistent and realistic weighted caseload system which compares various cases in accordance to agreed upon standards. Only with a weighted caseload system can the court efficiently use those human resources

available now and budget for those needed. The judicial branch has contracted with the National Center for State Courts to conduct professional and independent workload assessments for judges and clerical staff in New Hampshire trial courts.

***9. The location of new court facilities should prioritize convenience to the public and users of the facilities and reflect ongoing changes in demographics. It should also encourage and provide for interaction and cooperation among all of the New Hampshire courts. Evaluating the establishment of new courts with unified or specialized jurisdiction is beyond the specific charge of this Committee, but we recommend further study of such issues.***

The locating of court facilities involves a complicated mix of political realism, functional needs, and personnel demands. It is essential that convenience and service to the public and system users be the governing criteria as these decisions are made in the future. As court locations are studied for future construction, we recommend consideration of combining other public or governmental agencies or resources at a common location. The availability of convenient parking facilities is an important factor in placement of courthouse facilities.

Population demographics in New Hampshire require a careful assessment and we recognize that established political subdivisions may not always provide the most effective basis for determining court geography or jurisdiction. Moreover, the effective and efficient provision of court services increasingly demands cooperation and teamwork among our various courts. In some respects this can be as simple and important as sharing courtroom facilities

and technological services within the same courthouse. Beyond that, however, there should be continued study of the most effective and efficient delivery methods where different courts overlap or provide similar services. In its broadest sense, this examination will likely also involve the possibility of certain disputes or matters being handled in forums or through procedures outside of our courts. As noted in the Responding to the Needs of the Public recommendations, the Committee has discussed and is mindful of the various proposals for unifying certain trial court operations, or consolidating certain types of cases into one forum, such as expansion of the Family Division. There are also issues related to the expansion of District Court or Probate Court jurisdiction to handle certain types of cases. The Committee has also researched and discussed the development or expansion of specialized courts (such as urban center “drug courts,” courts with a focus on complicated business disputes, etc.) and urges continued study or experimentation in particular locations where such needs are significant. The Committee also recommends continued study and consideration of the “problem-solving” model for courts in appropriate cases. Under this format, courts are organized to provide integrated handling of families’ various legal problems. More rigorous supervision, more engagement of community resources and great accountability are hallmarks of problem-solving courts. The Committee recognized that many of these jurisdictional issues are under existing examination by other committees or review processes, and it encourages careful ongoing assessment of those studies. We did not believe that the charge to this Committee from the Supreme Court, which was to examine the needs and priorities of the court system within an approximately five-year window, would realistically permit a comprehensive look at the revamping of court jurisdiction and therefore did not undertake it.

# IV

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## ***Advancing Access To Court Information Through Technology—Innovations That Improve The Administration Of Justice***

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Technology is impacting the court system at a dramatic rate, placing demands upon our procedures and handling of legal disputes, but also offering unprecedented opportunities for managing information and communications. The Committee has had the benefit of the views and ideas of many people who are experienced with technological innovation as well as those who are implementing similar programs. We have carefully reviewed the existing status of technological implementation and innovation in our courts, drawing heavily upon the input of professionals in the Administrative Office of the Courts. Additional input came from Clerk James Starr and his team at the United States District Court in Concord. The federal court went online with electronic filing this past spring and provided insight into their planning and some of the challenges which they addressed. The Committee sees the period of the next five years as offering significant promise for technological advancement.

The Committee believes that the top three technological priorities for the New Hampshire courts are: (1) implementation of a state-of-the-art trial court case management system (CMS); (2) simultaneous work on judicial branch business process enhancement (BPE); and (3) simultaneous updates to judicial branch policies regarding public access to the courts and the CMS. All three top priorities are already underway. In this report, we describe those critical issues as well as other recommendations for the court system.

### ***Recommendations***

- 1. Proceed with deployment of an updated case management system (CMS) for all New Hampshire trial courts. This flexible and powerful software will permit a system-wide database and a seamless exchange of information between system users.***

Supported by the New Hampshire legislature, the judicial branch has contracted with Tyler Technologies Inc. of Dallas, Texas for the trial court case management system (CMS). It is a state-of-the-art system that will be capable of supporting whatever policies and business processes are adopted by the judicial branch; in other words, judicial branch policies and procedures can be governed by a standard of “best practices” rather than be constrained by technology. The CMS will maintain statewide trial court information in a single data base, which, for the first time, will allow our judges and staff anywhere in the state to directly access case information from any other court in the state. The selected CMS incorporates technologies that have been broadly adopted as the standards for such exchanges, such as the XML<sup>1</sup> format for data streams. Thus, the judicial branch will have the necessary platform to participate in the J-ONE<sup>2</sup> exchange of criminal justice information with executive branch agencies. The CMS also incorporates sophisticated reporting and accounting software so that court personnel and other interested

<sup>1</sup> Extensible Markup Language is a flexible way to create standard information formats and share both the format and the data. XML facilitates the transfer of specified data elements from one data base (e.g. the court case management system) to another data base (e.g. the Department of Safety’s Criminal History Repository.)

CMS = court case management system

BPE = business process enhancement

constituencies (such as legislators, attorneys and the public) can readily obtain information and analysis about judicial branch performance. It will also have the functionality to allow the adoption of additional services, such as electronic filing, document management, self-scheduling and public access, as these initiatives are undertaken.

*The CMS will maintain statewide trial court information in a single data base, which, for the first time, will allow our judges and staff anywhere in the state to directly access case information from any other court in the state.*

Implementation at the first site, Concord District Court, will occur in the fall of 2004. Thereafter, the CMS will be deployed in the remaining District Courts, according to a schedule soon to be finalized. Once deployment has begun in the District

Courts, analysis and deployment of the CMS in the Superior Courts will begin, followed similarly by the Probate Courts and then Family Division Courts. Apart from unforeseen complications or resource limitations, the entire project is likely to require two to four years.

The Supreme Court completed implementation of its updated CMS in the first half of 2004.

**2. Engage in business process enhancement (BPE) as the case management system is deployed. This will be coordinated by a system-wide team of knowledgeable staff, but also involve key local court personnel.**

While CMS deployment takes place, the court system will also engage in business process enhancement. A court business process can be described as the identification of how the court's work is

accomplished. For example, a business process is what happens between the time a court receives a pleading, including logging, entry into the CMS, placement into a file, identifying a deadline for objection, presenting the documents to a judge, processing the judge's order and serving the parties. The business processes developed for paper transactions were suitable for their time, but it is important to examine whether those processes should simply be mirrored by new technological tools, or whether those tools provide an opportunity to reengineer those processes to be more efficient or economical or otherwise enhance the ability of courts to serve the public. BPE involves identification of court processes and an analysis of how those processes can be improved based upon the availability of new technological tools. Different approaches, such as process improvement (an approach to simplify and streamline business processes, using measurements and control to aid in continuous improvement) and process reengineering (a fundamental rethinking and radical redesign of business processes to bring about dramatic improvements in performance) will be used to enhance our business processes.

The judicial branch has already consulted with a nationally recognized expert, David Steelman of the National Center for State Courts, to assist with BPE. The Committee stresses the importance of appointing a team of key, knowledgeable staff from all of the trial courts to guide BPE, as well as the importance of enlisting key personnel at each court location to be the CMS "local expert." The Committee also stresses the importance of providing support to help with the regular work of the BPE team members. The BPE effort will be lengthy and labor intensive. Accordingly, this project should be the top priority for identified team members so that the team is able to obtain the full benefits of CMS implementation.

<sup>2</sup> One Network Environment for Justice (J-ONE) is a project spearheaded by the New Hampshire State Police to provide for the timely electronic exchange of information between the members of the greater New Hampshire criminal justice community.



**3. *Examine issues of public access and privacy and develop recommendations concerning those issues as the CMS and BPE projects are implemented.***

While implementation of the CMS and BPE projects proceeds, the New Hampshire Supreme Court Task Force on Public Access to Court Records (Public Access Task Force), chaired by Justice Larry M. Smukler of the Superior Court, will develop a proposed public access/privacy policy concerning the CMS and make recommendations to the Supreme Court. This committee is already working on issues concerning public access to the courts, and its work has included a symposium attended by members of all relevant constituencies. The committee itself is drawn from a diverse group to reflect these broad constituencies throughout its work. This committee's work will culminate in June 2005 with a report and recommendations to the Supreme Court concerning public access and privacy policies.

With the Committee's top technological priorities already in progress, the Committee has identified several other priorities nearly as important as the first three.

**4. *The court system must communicate with and draw upon the input of a broad group of constituencies to maximize the success of technology development and utilization.***

In order for the change associated with the implementation of an electronic CMS to be successful, it is essential that the relevant constituencies be involved in the process as it develops. (See Appendix A.) Especially critical is that all judges, clerks and staff be consulted, educated and trained, timely and thoroughly, concerning the CMS and BPE,

so that they will understand how to use the CMS effectively, as well as how it will benefit themselves and the public.

**5. *A CMS working group should be established to assist in implementation and development issues.***

We strongly recommend that the Supreme Court appoint a CMS Working Group, consisting of judges and staff from all trial courts, as well as members of the BPE team, whose responsibility will include quick response to CMS issues as they arise during implementation. This group would also (i) work on standardization of forms and procedures both for internal use and for posting on the website, (ii) make recommendations concerning necessary policies and/or rules changes, (iii) develop web site content and (iv) interact with and report to the Judicial Branch Technology Committee.

We expect the Technology Committee, chaired by Judge Smukler, to continue to develop and update long-range technology plans for the court system. We also encourage it to communicate these plans frequently to judges and staff and to consider expanding its membership to include members of other constituencies, such as the bar and public users of the system.

**6. *Inform the Legislature about the financial impact associated with court technology and make efforts to enlist legislative support for funding needs and necessary additional costs (that are not offset by savings), both staff and technological, in each budget cycle.***

CMS = court case management system

BPE = business process enhancement

<sup>3</sup> We estimate that well over two full-time equivalent staff positions, spread throughout the court system, are devoted each year just to printing, folding, and addressing outbound notices. A properly designed E-noticing system could both pick up economies in mailing costs (through access to postal discounts on the 1 million+ pieces mailed each year and, indeed, elimination of postage altogether for those receiving notices via more efficient E-mail delivery) and make possible application of automation to eliminate certain repetitive manual tasks. This would release personnel time within each court to better serve the public.

A uniform collection and addressing facility, soon to be possible based upon the new CMS backbone, would enable all senders (judges, clerks, etc.) to be relieved of having to determine who is registered with the E-mail system. The system would automatically route notices electronically wherever possible and batch, sort, print, insert and mail all others using automated systems.

## **7. Carry out three additional important innovations early in the development of CMS:**

- a. Make self-help computer terminals available to the public at each court site as the CMS is deployed. At the outset public access will be limited to information on the Judicial Branch website and designated self-help websites. The content of information from the CMS available for public viewing at these terminals will be determined by the Supreme Court with advice from the Public Access Task Force. Public access to CMS data should be available as soon as the Public Access Task Force's work is implemented. This will relieve staff from some of the effort required to deal with public requests for access to files, as well as provide the public with information about cases, processes, policies and rules, saving additional staff time and effort. Enhanced web and support services should be deployed both to facilitate the use of these terminals and to enable the public to better utilize court services generally.
- b. Begin use of electronic notice of hearings and court orders as the CMS is implemented at each court site to assist the staff, bar and self-represented parties.
- c. A centralized mailing system should be utilized to relieve staff from the effort involved in paper-noticing to those parties, jurors, etc. for whom e-noticing is not available.<sup>3</sup> We estimate that the savings in postage can easily absorb the cost of centralized mailing. This small change will greatly improve staff working conditions, without any cost to the bar or the public.

## **8. Continue technology development and innovation in areas beyond the identified critical programs.**

Apart from the core or critical technological priorities described in recommendations 1 through 7 above, the Committee has identified additional areas for future technological innovation. Some of these recommendations provide collateral support for earlier described systems (e.g., "help desk" support, computer in every courtroom using CMS supported data), while others are stand-alone technologies. These further recommendations for future development are set forth below in the Committee's assessment of priority.

- Computer in courtroom (a necessary part of effective CMS – includes printer/scanner/copier)
- Telephone systems / voice messaging (foundation for other technologies)
- Enhanced web / support services
  - Help Desk (e.g., 1-800-NH-COURT)
  - Information about court locations and operations
  - Case manager / self-represented parties assistance clerk
  - Miscellaneous material (jury questionnaires, etc.)
  - E-filing support
  - E-notice accessibility
- E-filing (includes scanning to complete case file)
- Digital Transcripts
  - Supreme Court webcasting / filing
  - Potential Electronic storage
- Audio Conferencing (e.g., need for interpreters)
- Video Conferencing

- Evidence Presentation (possible solution: flat screen monitors with multiple universal inputs – i.e., presenter brings and controls capability to get the presenter’s materials into one of several standardized media input ports)
- Internet access available to court personnel
- Additional wiring to enhance electronic media coverage of court proceedings
- Real Time Transcripts
  - Hearing difficulties
  - Special Court /case needs
- Two-dimensional bar codes
- Scanning paper files to electronic images for archives
- Other technologies to come

The findings of this subcommittee illustrate the need to constantly hold a list of “futures.” Today’s effectiveness and efficiency of the court system can be greatly enhanced by deploying updated technologies, many of which are routinely utilized outside of the court system. Similarly, to better serve in the future, the courts should position themselves to monitor and deploy emerging technologies as they become cost and mission effective.

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*Today’s effectiveness and efficiency of the court system can be greatly enhanced by deploying updated technologies, many of which are routinely utilized outside of the court system.*

# Conclusion

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In this report we have set out our vision for the New Hampshire courts for the next five years. It is clear to us that the pace of change in our state and the demands and expectations facing our courts will accelerate dramatically in this period. We are confident our courts will continue to uphold and advance the principles of justice and protection of rights and liberties at the core of our democracy - but they must be able to embrace and utilize new technology, procedures and systems of communication.

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*The fundamental obligation of our courts to provide for the fair and efficient administration of justice requires us to look to the future and determine our needs and our priorities. That is what this Committee has done.*

While the adage is true that we should not attempt to “fix” things that are not “broken,” it is equally true that we cannot delay making needed changes until systems break down or become outmoded. The fundamental obligation of our courts to provide for the fair and efficient administration of justice requires us to look to the future and determine our needs and our priorities. That is what this Committee has done. Our recommendations set forth reasonable and achievable changes and approaches which will enable our courts to meet the coming challenges and to continue to provide high levels of service.

We have stressed throughout this report the theme that providing outstanding service will be defined by meeting the service expectations of all users of the courts. Only by consistently providing prompt, responsive and excellent service will the public provide the support, funding, and confidence necessary for our courts to achieve the vision and promise which our report describes.

The Committee appreciates the opportunity to provide this set of recommendations and looks forward to joining in the effort to provide a court system that is as strong and excellent as our vision.

# Appendix A

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## Constituency Involvement In Case Management System

As the Case Management System (CMS) is introduced throughout the New Hampshire trial courts, numerous user groups will have an interest in the types of information the new system can produce. The committee encourages the early involvement of these interest groups, including those listed here, in the development of the CMS and its information storage and retrieval systems.<sup>1</sup>

1. Judges, clerks, registers and court staff
2. Court Technology Committee
3. State Agencies
  - a. J-ONE project participants (see footnote 2 p. 32)
  - b. Department of Health and Human Services
    - i. Division of Children Youth and Families
    - ii. Division of Child Support Services
    - iii. N.H. Hospital
    - iv. Child abuse registry
    - v. Adult Protective Services
  - c. N.H. State Office of Cost Containment
  - d. New Hampshire Judicial Council
  - e. Professional Boards
    - i. Attorney Discipline Office
    - ii. Judicial Conduct Committee
    - iii. Department of Safety records checks
    - iv. Guardians (adult & minors)
  - f. Division of Vital Records
  - g. Secretary of State
  - h. Policymakers
    - i. Legislature
    - ii. Academics
    - iii. Department of Administrative Services
  - i. Department of Revenue Administration
  - j. N.H. Attorney General
  - k. Guardian *ad litem* board
- l. Licensing boards
4. Attorneys
  - a. Bar Association
  - b. Trial Lawyers
  - c. County Attorneys
  - d. Attorney General's office
  - e. Public Defenders
  - f. Legal Assistance attorneys
5. Self-Represented litigants
6. Advocacy groups
  - a. Domestic Violence
  - b. Mediation
7. Commercial researchers
8. Private researchers
9. Press

<sup>1</sup> The Public Access Task Force (see p. 33) has work underway to evaluate the process for constituency involvement.